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Complex Litigation  
General Business Law

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RECEIVED

DEC - 8 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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December 8, 2003

### Via Hand Delivery

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: *In the Matter of the Application of Touch America, Inc. (Debtor-in-Possession) For Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Section 63.71 of the Commission's Rules, To Discontinue Domestic Telecommunications Services***

Dear Ms. Dortch:

On behalf of Touch America, Inc. (Debtor-in-Possession), enclosed herewith is an original plus four (4) copies of its Section 63.71 Application.

An additional copy of this filing is also enclosed, to be date-stamped and returned in the envelope provided.

Should there be any questions regarding this filing, kindly contact the undersigned.

Respectfully submitted,

Charles H. Helein

CHH/sr  
Enclosures

cc Service List

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

DEC - 8 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

\_\_\_\_\_  
In the Matter of the Application of )

TOUCH AMERICA, INC. (Debtor-in-Possession) )

For Authority Pursuant to Section 214 of the )  
Communications Act of 1934, as Amended, )  
And Section 63.71 of the Commission's Rules, )  
To Discontinue Domestic Telecommunications Services )  
\_\_\_\_\_ )

WC Docket No. \_\_\_\_

**SECTION 63.71 APPLICATION**

Pursuant to Section 63.71 of the Rules of the Federal Communications Commission (hereinafter, "FCC" or "Commission"), and 47 U.S.C. § 214(a) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), Touch America, Inc (Debtor-in-Possession) (hereinafter, "Touch America - DIP") respectfully submits this Application requesting authority to discontinue certain enumerated facilities-based domestic, interstate, interexchange telecommunications services

In support of its Application, Touch America - DIP submits the following.

**I. Information Pursuant to Section 63.71**

**A. Name and Address of the Carrier**

Touch America – DIP is currently located at 130 North Main Street, Butte, MT 59701-9331

Contacts or correspondence for purposes of this Application should be directed to

Regulatory Counsel:

With a copy to

Charles H. Helein, Esq.  
Jonathan S. Marashlian, Esq.  
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Michael J. Meldahl  
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Touch America, Inc. (Debtor-in-Possession)  
130 N. Main St.  
Butte, MT 59701-9331  
Tel 406-497-5199  
Fax 406-497-5376  
E-mail: [mmeldahl@tamerica.com](mailto:mmeldahl@tamerica.com)

Touch America – DIP's toll-free customer service telephone number for customer inquiries regarding the discontinuance of services contemplated by this Application is 1-800-590-1025

**B. Date of Planned Service Discontinuance**

Touch America – DIP anticipates discontinuing certain enumerated facilities-based domestic, interstate, interexchange telecommunications services on January 31, 2004, or as soon as reasonably possible upon receipt of the necessary regulatory approvals. The telecommunications services Touch America – DIP proposes to discontinue include its Asynchronous Transfer Mode ("ATM") and Frame Relay services, as more fully described in Sections C and D, below.

**C. Points of Geographic Areas of Service Affected**

Geographic areas of service affected by Touch America – DIP’s proposed discontinuance of the above-referenced services include the states of Alabama, Arizona, California, Colorado, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, West Virginia, and Wyoming. The ATM/Frame Relay services Touch America – DIP proposes to discontinue are wholly interstate in nature, but customers with locations in the aforementioned states will be affected by the proposed discontinuance. Touch America – DIP intends to discontinue ATM/Frame Relay services to customers located in these states no later than January 31, 2004 or as soon as reasonably possible, in either event, subject to receipt of FCC authority to do so.

**D. Description of Type of Service Affected**

The specific facilities-based telecommunications services Touch America – DIP requests Section 214 Authority to discontinue are its domestic, interstate, interexchange ATM and Frame Relay services that are presently provided to less than approximately 350 customers. The affected customers are primarily commercial, including a government prime contractor.<sup>1</sup> The ATM/Frame Relay services provided to these customers range in capacity from DS-0 to OC-3. The majority, however, take services in the DS-0 to DS-1 range.

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<sup>1</sup> In regard to this customer see below, Section II.B, page 6

**E. Dates and Methods of Notice to All Affected Customers**

Individual written notices in conformance with Section 63.71<sup>2</sup> of the Commission's regulations were provided to each customer impacted by the proposed discontinuance via first class mail on December 2, 2003. A copy of the customer notice is attached hereto as Exhibit A. The customer notices provide the information required by Section 63.71(a) of the Commission's rules and identifies which services Touch America – DIP is seeking to discontinue.

Touch America -- DIP also certifies that, concurrent with the filing of this Application, it is submitting a copy of this Application (including customer disconnection notices) to the public utility commission and the Governor of each state in which discontinuance of services is proposed, as well as to the Secretary of Defense, Special Assistant for Telecommunications, as required by Section 63.71(a) of the Commission's rules.

**F. Status of the Carrier as Dominant or Non-Dominant**

Touch America – DIP is non-dominant in the provision of each of the services for which discontinuance authority is sought.

**II. Circumstances of the Discontinuance**

**A. General**

On June 19, 2003, Touch America Holdings, Inc. ("TA Holdings") and several subsidiaries, including Touch America, Inc.,<sup>3</sup> filed voluntary petitions under Chapter 11 of the

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<sup>2</sup> 47 C.F.R. § 64.71

<sup>3</sup> Touch America, Inc. is the telecommunications subsidiary of TA Holdings and holder of blanket domestic Section 214 Authority. Following the Chapter 11 bankruptcy filing, Touch America, Inc. notified the Commission of its bankrupt status and obtained a new FCC Registration Number for Touch America, Inc. (Debtor-in-Possession) to reflect the company's bankrupt status. See FRN. 0005806468.

U.S. Bankruptcy Code to reorganize their business and financial structure.<sup>4</sup> The Chapter 11 Bankruptcy was precipitated by several factors, including a drastic reduction in the company's ability to access capital through the capital markets, changes in the expectations of financial institutions, severe decline in the company's stock value, and the prolonged economic downturn generally affecting the telecommunications industry following the "dot-com boom."

At the time this Application is filed with the Commission, Touch America – DIP will have been operating under Chapter 11 protection for nearly six months. During this period of time, Touch America – DIP has actively sought purchasers of its ATM/Frame Relay services and suitors have actively pursued acquiring these services. Although Touch America – DIP continues to currently provide ATM/Frame Relay services, it is confident that most, if not all, customers currently taking these services from it will be able to successfully migrate to other qualified carriers prior to January 31, 2004.

All affected customers have been on actual and constructive notice of Touch America – DIP's financial inability to maintain ATM/Frame Relay services indefinitely for quite some time. In fact, many customers have already migrated their services to alternate providers as a result of such notice. To ensure that all remaining customers are fully aware that Touch America – DIP intends to discontinue service on January 31, 2004, or earlier if necessary regulatory approval is obtained, Touch America – DIP has mailed customer notices that comply with the Commission's rules.

Touch America – DIP will work with its customers every step of the way to ensure that there are no interruptions or discontinuances in service until each customer has successfully

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<sup>4</sup> See Chapter 11 Case No. 03-11915-MFW *et al.* (Bankr. D. Del.).

migrated their ATM/Frame Relay services to another qualified carrier or carriers of their choosing

#### **B. Northrop-Grumman**

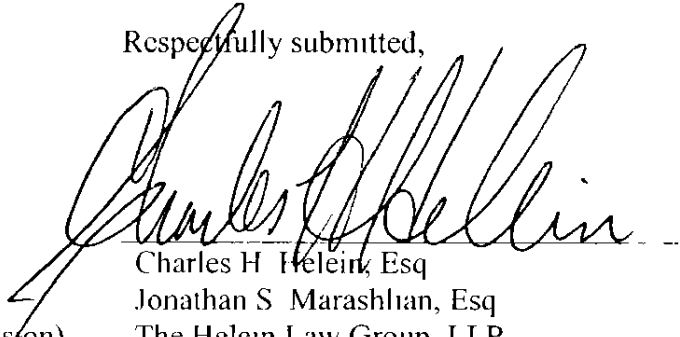
On November 18, 2003, Northrop Grumman ("NG"), as prime contractor with the U S Department of Treasury, for the provisioning and management of telecommunications services, filed comments ("Comments") on the Domestic Section 214 Application Filed for Acquisition of Assets of Touch America – DIP by 360networks (USA) inc in WC Docket No. 03-227 Touch America – DIP has contacted NG in order to gain a better understanding of NG's concerns as expressed in its Comments. Pursuant to those discussions, NG has advised that it seeks assurances that a proper level of commitment to ensuring continuity of service to NG exists To provide those assurances, Touch America – DIP hereby acknowledges that continued delivery of ATM/Frame Relay services is dependent on network assets being sold by Touch America – DIP that supply these services. Further, Touch America – DIP is actively working with the companies to which it is transferring its ATM/Frame Relay assets to provide a coordinated effort to provide the continuity of service sought by NG, including, where necessary, arranging for continued access to these network assets as needed after transition of all of NG ATM/Frame Relay services to other providers' networks

#### **III. Conclusion**

For the foregoing reasons, Touch America – DIP respectfully requests, pursuant to Section 214(a) of the Act, 47 U.S.C. § 214(a), and Section 63.71 of the Commission's Rules, 47 C.F.R. § 63.71, that the Commission approve its Application to discontinue the provision of its domestic, interstate, interexchange ATM/Frame Relay services. Also, Touch America – DIP requests the Commission permit this Application to become automatically effective on the 31<sup>st</sup>

day after filing, as per Section 63.71, or as soon thereafter as practical given Touch America – DIP's bankrupt status, as described herein Touch America – DIP respectfully requests that Commission approval of its Application be granted no later than January 31, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles H. Helein", is written over a horizontal line. The signature is fluid and cursive.

Michael J. Meldahl  
President  
Touch America, Inc. (Debtor-in-Possession)  
130 N. Main St.  
Butte, MT 59701-9331  
Tel: 406-497-5199  
Fax: 406-497-5376  
E-mail: [mmeldahl@tamerica.com](mailto:mmeldahl@tamerica.com)

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E-mail: [jsm@thlglaw.com](mailto:jsm@thlglaw.com)

Dated: December 8, 2003



**EXHIBIT A**

**Customer Notice**

TOUCHAMERICA  
Butte Office  
130 N. Main  
Butte, MT 59701-9332  
406 497 5100



**NOTICE OF SERVICE DISCONTINUANCE**  
**DO NOT DISREGARD THIS NOTICE**

December 2, 2003

[REDACTED]  
[REDACTED]  
Columbus, OH 43207-2426  
Account Number:

Dear Touch America Customer:

As of January 31, 2004, Touch America will discontinue all Asynchronous Transfer Mode (ATM) and Frame Relay services. Subject to regulatory approval, the anticipated date for the discontinuance of these services under your Touch America account is January 31, 2004.

You must select a new carrier as soon as possible to avoid any interruption of service because some carriers may require several weeks to install new services. To help avoid service disruption, check carefully that all ATM/Frame Relay services you currently have with Touch America are moved to your new carrier. After you choose your new provider, Touch America will use its best efforts to ensure a smooth transition of service.

The Federal Communications Commission (FCC) permits customers to object to discontinuance of their service by a telecommunications provider. As provided in the FCC's rule 47 CFR 63.71:

*The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, D.C. 20554, referencing the Section 63.71 Application of Touch America, Inc. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.*

Touch America appreciates the opportunity we have had to serve you, and we are committed to your complete satisfaction during this transition period. If you have any questions regarding the discontinuance of your service, please contact us at 1-800-590-1025.

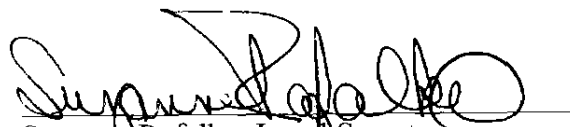
Sincerely,

A handwritten signature in cursive script, appearing to read "Michael J. Meldahl".

Michael J. Meldahl  
President, Touch America, Inc

**CERTIFICATE OF SERVICE**

I, Suzanne Rafalko, hereby certify that true copies of the foregoing were sent on December 8, 2003 by U S Mail, postage pre-paid (unless otherwise indicated), to the individuals listed in the attached

  
Suzanne Rafalko, Legal Secretary

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Attn Special Assistant for Telecommunications  
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